

Civil Revision Application No 175 of 96

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Civil Revision Application No. 176 of 96

Date of decision: 08/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civ.. Judge?

Parties in C.R.A. No. 175 of 1996

EXECUTIVE ENGINEER

vs

SUNNY INDUSTRIES

Appearance in C.R.A. No. 175 of 1996

MR TUSHAR MEHTA for Petitioner

MR MA KHARADI for Respondent No. 1

Parties in C.R.A. No. 176 of 1996

EXECUTIVE ENGINEER, GEB

vs

Appearance in C.R.A. No. 176 of 1996

MR. TUSHAR METHA for petitioner
MR. S.M. SHAH for Respondent No.1

Coram : MR.JUSTICE S.D.SHAH

COMMON ORAL JUDGEMENT

1. RULE. Mr. M.A. Kharadi and Mr. S.M. Shah waive service of Rule on behalf of respective respondent No.1. Mr. Tushar Mehta seeks permission to delete respondent No.2. Permission is granted. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.

2. Civil Judge (S.D.), Junagadh Mr. S.A. Bhutka has passed absolutely unusual Order below Exhibit-5 in Spl. Civil Suit No. 7 of 1996 and Spl. Civil Suit No. 10 of 1996. At the stage of local investigation carried out by the officers of the Gujarat Electricity Board, some foul-play was suspected and the electrical meters already installed at the premises of the plaintiffs were removed and another meters were installed. The purpose of such removal was to test the said meters in its own Laboratory. The respondent No.1 plaintiff in each suit felt aggrieved by such action and therefore instituted the suit and prayed for relief under Section 94 read with Section 151 of Order 26 of the Code of Civil Procedure for appointment of Commissioner and for taking custody of the meters from the officers of the Gujarat Electricity Board and to submit such meters to the custody of the Court till such meters are tested by the authority competent to test the meter. There are statutory provisions investing power in the authority under the provisions of the Indian Electricity Act, 1910. On allegations simpliciter that authority would abuse their power or would not act in accordance with law, if the court of law would start interfering with purely administrative function, the executive authority would not be in a position to perform its duties even in accordance with the provisions of the statute. At this stage excepting the removal of the meters and installing new meters in place thereof, no further action was done and notices were issued to the consumers that the meters shall be opened for its checking in presence of the plaintiffs. At that stage, the plaintiffs rushed to the court with applications that the duty to inspect and check the meter is that of Electrical Inspector and that no Officer of the Gujarat Electricity Board can open or check the meters. At this stage reference is required to be made to Section 26 of the

Indian Electricity Act more particularly with emphasis of sub-section 6 of the said provision. The Section 26 of the said Act is quoted in extenso hereunder:

26. Meters--

- (1) In the absence of an agreement to the contrary, the amount of energy supplied to consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter:

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

- (2) Where the consumer so enters into an agreement for the hire of a meter the licensee shall keep the meter correct, and in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.

- (3) Where the meter is the property of the consumer, he shall keep the meter correct, and, in default of his doing so, the licensee may after giving him seven days' notice, for so long as the default continues, cease to supply energy through the meter.

- (4) The licensee or any person duly authorised by the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to, and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove, any meter referred to in sub-section (1); and, except where the meter is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer; and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an [Electrical Inspector], and the decision of such Inspector shall be final;

Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined as therein provided.

- (5) A consumer shall not connect any meter referred to in sub-section (1) with any electric supply-line through which energy is supplied by a licensee, or disconnect the same from any such electric supply-line, [but he may by giving not less than forty-eight hours' notice in writing to the licensee require the licensee to connect or disconnect such meter and on receipt of any such requisition the licensee shall comply with it within the period of the notice.]
- (6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount of quantity:

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do.

- (7) In addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of sub-section(1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer, or any other quantity or time connected with the supply;

Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary, be placed otherwise than between the distributing mains of the licensee and any meter referred to in sub-section (1):

Provided, also, that, where the charges for the supply of energy depend wholly or partly upon the reading or indication of any such meter, indicator or apparatus as aforesaid, the licensee shall, in the absence of an

agreement to the contrary, keep the meter, indicator or apparatus correct; and the provisions of sub-sections (4), (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (1).

Explanation:- A meter shall be deemed to be "correct" if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error, and a maximum demand indicator or other apparatus referred to in sub-section (7) shall be deemed to be "correct" if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus."

2. This very provision was subject matter of interpretation by the Hon'ble Supreme Court of India in the case of MPEB v. Smt. Basantibai, reported in AIR 1988 SC 71. While dealing with interpretation of sub-Section 6 of Section 26, the Supreme Court has made following observations, which in my opinion, shall have to be kept in mind while dealing with the dispute of this nature:

" It is evident from the provisions of this section that a dispute as to whether any meter referred to in sub-sec.(1) is or is not correct has to be decided by the Electrical Inspector upon application made by either of the parties. It is for the Inspector to determine whether the meter is correct or not and in case the Inspector is of the opinion that the meter is not correct he shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during a period not exceeding six months and direct the consumer to pay the same. If there is an allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to the consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of sub-section (6) of S.26. Such a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is outside the ambit of S.26(6) of the said Act. An Electrical Inspector has, therefore, no jurisdiction to decide such cases of fraud. It is only the dispute as to whether the meter is/is not correct or it is inherently defective or faulty not recording correctly the electricity consumed, can be decided by the Electrical Inspector under the provisions of the said Act.

In the instant case it appears from the report of the Assistant Engineer of the State Electricity Board that one phase of the meter was not working at all, so there is undoubtedly a dispute as to whether the meter in question is a correct one or a faulty meter and this dispute has to be decided by the Electrical Inspector whose decision will be final. It is also evident from the said provision that till the decision is made no supplementary bill can be prepared by the Board estimating the energy supplied to the consumer, as the Board is not empowered to do so by the said Act. It is pertinent to refer in this connection to the observations made in the case of Gadag Betgiri, Municipal Borough, Gadag v. Electrical Inspector, Govt. Electrical Inspectorate, Govt. of Mysore, AIR 1962 Mys 209 as follows :-

"What the Inspector may decide under sub-sec. (6) is whether or not the readings obtainable from the meter are accurate and whether the meter are accurate and whether the meter is faulty or mechanically defective, producing erroneous readings. That is the limited adjudication which in my opinion, an Inspector or other authority functioning under sub-section (6) may make under its provisions."

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" In my opinion, the legislative intent underlying S.26(6) of the Act is similar. The only question into which the Inspector or other authority functioning under that sub-section might investigate is, whether the meter is a false meter capable of improper use or whether it registers correctly and accurately the quantity of electrical energy passing through it. If in that sense, the meter installed by respondent 2 this case was a correct meter as it undoubtedly was and as it has been admitted to be, the fact that respondent No.2, even if what the petitioner states is true, so manipulated the supply lines that more energy than what was consumed by the petitioner was allowed to pass through the meter would not render the meter which was otherwise correct an incorrect meter."

This decision was followed in M.P. Electricity Board, Jabalpur v. Chhaganlal, AIR 1981 Madh Pra 170 where it has been observed: -

" Where an electric meter is not registering correct consumption of energy not because there is any defect in the meter but because the wiring is defective S. 26(6) will not be attracted and the meter not being defective

the question of arbitration by Electrical Inspector will not also arise."

A Contrary view was however taken in the case of Abdul Razak v.M.P. Electricity Board, 1982 MPLJ (Notes) (37) p. 22 where it has been held that :-

" About the fittings on the meter and tampering them in such a manner that the reading of the energy would not be correct, such a dispute in view of the language of S.26(6) read with Rule 3 of Schedule VI of the Electricity Act squarely falls within the jurisdiction of the Electrical Inspector."

We are, however, unable to accept this contrary view as it is obvious from the provisions of S.26, sub-sec.(6) of the said Act that dispute whether a meter is correct or faulty would come under the said provisions and not the dispute regarding tampering the meter. In our view, the view taken about the scope of S.26(6) in the decisions cited above are correct. In the instant case the dispute relates to whether the meter is correct one or it is faulty not recording the actual energy consumed in running the oil mill of the respondent. So this dispute squarely falls within the provisions of the said Act and as such it has been rightly found by the High Court that it is the Electrical Inspector who alone is empowered to decide the dispute. If the Electrical Inspector comes to the finding that the meter is faulty and due to some defect it has not registered the actual consumption of electrical energy, then the Inspector will estimate the amount of energy consumed and will fix the amount to be paid in respect of such energy consumed within a period not exceeding six months."

3. From the aforesaid interpretation of sub-section 6 of Section 26 it becomes clear that dispute as to whether a meter is correct or faulty would fall under sub-section 6 and not the dispute regarding tampering of meter. Prima facie, the stand of the petitioner Board is that it is not a case of incorrect or faulty reading of the consumption by the meter and that something else was suspected. However, at this stage when the meters are already removed and another meters are already installed and when notices are given to the consumers to remain present at the time of checking of the meters, interference of the court under Order 26, in my opinion, was unwarranted and uncalled for. Without going into further details about the power of the Civil Court to interfere with the matter when it is still under investigation of a statutory authority empowered to investigate into it. It is stated at the Bar by Tushar Mehta, learned Counsel appearing for the petitioner Board that the meters in question shall be opened

for checking in presence of the Officers of G.E.B. as well as Electrical Inspector and the plaintiffs and that appropriate decision shall be taken thereafter. In view of the aforesaid statement, the learned Counsel appearing for respondent No.1 in each petition have no objection to the said course being adopted. In view thereof, it is directed that the Court Commissioner, who has applied his seal to the meters in question shall open the seal on the date and time to be fixed by the petitioner and at that time the Electrical Inspector shall remain present and plaintiffs if so desirous and to whom the intimation shall be given shall also have right to remain present. In view of the aforesaid, these Civil Revision Applications are allowed to the aforesaid extent and the judgments and orders of the Civil Judge (S.D.), Junagadh passed below Exhibit-5 Application in Spl. Civil Suit No. 7 of 1996 and Spl. Civil Suit No. 10 of 1996 are quashed and set aside and are substituted by the aforesaid direction. In case after the inspection and checking of the meters in question by the Board in presence of Electrical Inspector, if it is found that there was fraud or theft of electric consumption by tampering with the meters or by another mode, as observed by the Supreme Court, provision of Section 26 of the said Act would not apply and it will be open to G.E.B. to take action in accordance with law. Rule on each Civil Revision Application is made absolute to the aforesaid extent only. There shall be no order as to costs.
